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ALEXANDER L. STEVAS,
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No. 82-63

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

CITY OF REVERE,

Petitioner,

v.

MASSACHUSETTS GENERAL HOSPITAL,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Judical Court for the Commonwealth of Massachusetts

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BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

QUESTION PRESENTED

Is a municipality which, in the course of arresting a suspected criminal, injures and immobilizes him and thereafter brings him to a hospital for necessary medical care liable to the hospital for the costs of that care?

SUMMARY OF PROCEEDINGS

This collection case was initiated by the Massachusetts General Hospital ("MGH") against the City of Revere ("Revere") in Boston Municipal Court on March 18, 1980. The matter was removed to the state superior court which entered summary judgment for Revere. The Supreme Judical Court reversed in part, and judgment was entered accordingly for MGH. Revere now petitions this Court for a Writ of Certiorari.

STATEMENT OF FACTS

On September 20, 1978, Revere police officers attempted to detain a man suspected of breaking and entering. When the man, Patrick Kivlin, refused to stop, the police shot him.

The police called an ambulance which took Kivlin, accompanied by one of the police officers, to MGH. Kivlin was admitted and remained in the hospital for ten days, after which he was discharged into the custody of the Revere police department.

MGH subsequently billed the Revere police department for the treatment provided to Kivlin.[1/] When Revere refused payment, MGH brought this action.

1/ Charges for Kivlin's hospitalization on a later occasion when he returned to MGH on his own unescorted by the police are not in issue here.

ARGUMENT

The government must provide needed medical care to convicted persons. "[I]t is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself." Estelle v. Gamble, 429 U.S. 97, 104 (1976), quoting from Spicer v. Williamson, 191 N.C. 487, 490 132 S.E. 219, 293 (1926). It would be anomolous indeed if unconvicted prisoners had fewer rights and if the government had fewer obligations with respect to them. See Lutheran Medical Center v. Omaha, 204 Neb. 292, 295, 281 N.W.2d 786 (1979); Ramsey v. Ciccone, 310 F. Supp. 600, 604 (W.D. Mo. 1970).

Revere argued to the Supreme Judicial Court that "Kivlin had never been deprived of his liberty." (Supreme Judicial Court Brief, p.20). This

argument was not accepted by the court.

As the Supreme Judicial Court observed, Kivlin was clearly under arrest at the time he was shot. The police had acted to detain him with the obvious intention of arresting him; no reasonable person could have misunderstood. 385 Mass. 772, 772.[2/] The policeman who escorted Kivlin by ambulance to MGH announced to the hospital admitting officer that Kivlin was under arrest. See Appendix hereto.

In sum, "[h]ad he not been injured there is no question but that pursuant to duty the [police] would have taken him to jail and not to the hospital." Dodge City Medical Center v. Board of County Commissioners, 6 Kan. App. 2d 731, 732, 634 P.2d 163, 165 (1981). The "odds

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2/ The opinion of the Supreme Judicial Court is reprinted in the Petition.

against his 'escape' from the hospital were long." Id. at 733. Indeed, as the Supreme Judicial Court noted, when Kivlin was ready to leave MGH, he "was discharged by the hospital into the custody of the Revere police department." 385 Mass at 773.

The Supreme Judicial Court found Kivlin had a right to receive necessary medical care and Revere was obliged to pay for the care in order to insure that this right to treatment was effectuated. The Supreme Judicial Court grounded the right to treatment in the Eighth Amendment. 385 Mass. at 776.

In its petition to this Court, Revere now cites for the first time Ingraham v. Wright, 430 U.S. 651 (1977), and Bell v. Wolfish, 441 U.S. 520 (1979).[3/] Even if

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3/ Because these cases were not previously raised by Revere, they are not cited by the Supreme Judicial Court in its decision.

those decisions had been presented to the trial judge and had been considered by him and by the Supreme Judicial Court, however, the ultimate result -- the judgment against Revere for medical expenses -- would likely have been the same.

First, this Court has already recognized that unconvicted prisoners also have rights under the Constitution. Bell v. Wolfish, supra at 545; see Ingraham v. Wright, supra at 672 and n.40. Whether grounded in the Eighth Amendment or in the Due Process Clause of the Fourteenth Amendment, the rights of a suspect in custody (and still presumed innocent) are at least as great as those of a prisoner already adjudicated guilty, and the corresponding governmental obligations are also at least as great.

Bell v. Wolfish, supra at 545.[4] The rationale relied on by the Supreme Judicial Court -- the prisoner's inability to care for himself -- applies with equal force.[5] 385 Mass. at 777, 780 n.11.

Second, while the Supreme Judicial Court did not base its conclusion on the

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4/ See Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977) (medical treatment for serious disease or injury required by Due Process Clause); Newman v. Alabama, 503 F.2d 1320, 1330 (5th Cir. 1974), cert. denied 421 U.S. 948 (1975) (Due Process Clause is "equally satisfactory constitutional repository" of these rights and obligations); Inmates of Suffolk County Jail v. Eisenstadt, 360 F. Supp. 676, 688 (D. Mass. 1973), aff'd 494 F.2d 1196 (1st. Cir.), cert. denied sub nom Hall v. Inmates of Suffolk County Jail, 419 U.S. 977 (1974).

5/ Indeed, the Supreme Judicial Court would have extended the rule of Commissioner of Correction v. Myers, Mass. Adv. Sch. (1979) 2523, 399 N.E.2d 452 to allow the government to compel even an unconvicted prisoner to submit to treatment over his objection. 385 Mass. at 778 n.9.

Massachusetts Constitution, the court expressly noted that Art. 26 of the Declaration of Rights of the state Constitution also contains the prohibition against the infliction of "cruel and unusual punishments." 385 Mass. at 776 n.6. It would obviously be open to the state court to undertake the same analysis and reach the same result as a matter of state law without presenting any federal question for review by this Court.6/

Finally, Revere's reliance on Harris v. McRae, 448 U.S. 297 (1980), is fundamentally misplaced. That case held

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6/ Even assuming arguendo that this Court were inclined to reverse and remand based on decisions Revere never cited in the state courts, it is reasonable to expect that MGH would be permitted to amend its pleadings to raise expressly the due process and state constitutional claims.

that although the government could not prohibit abortions in certain cases, it was not obliged to pay for them through Medicaid. The difference, of course, is that the state clearly had no affirmative duty to provide the abortions -- merely the obligation not to interfere with a woman's right to arrange an abortion for herself.

Here, by contrast, Revere had already restricted Kivlin's ability to obtain his own necessary care by immobilizing (shooting) him and taking him into custody. As a result, Revere did have the affirmative obligation to provide that care. Estelle v. Gamble, supra. The Supreme Judicial Court did not tell Revere how that care was to be provided; it merely held that when Revere engaged

the services of MGH to do so, Revere became responsible for the resulting charges.7/

7/ Revere tries to buttress its argument by citing the Massachusetts "patient's rights" act, Mass. Gen. Laws c. 111, §70E(k). This law was not enacted until the year after Kivlin's hospitalization and thus does not apply. See St. 1979, c. 214. Finally, Revere comments that the Hill-Burton Act, 42 U.S.C. §§291 et seq., provides funding "for hospitals such as MGH," apparently intending to imply that MGH could have or perhaps even did receive payment from the federal government for this service. This issue was not raised below, so MGH had no opportunity to present contrary evidence on this point. In any case, these statutes obviously do not override Kivlin's rights or Revere's obligations under the Constitution. Revere's attempt to shift the burden of payment to other governmental entities is curious in light of its failure to appeal the dismissal of its third-party complaint against the Commonwealth of Massachusetts for reimbursement.

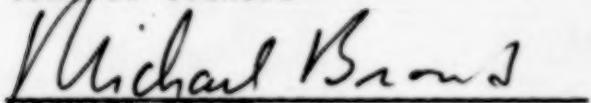
CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

Massachusetts General Hospital

ERNEST M. HADDAD
General Counsel



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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT

NO. 40642

MASSACHUSETTS GENERAL HOSPITAL
Plaintiff

vs.

CITY OF REVERE,
Defendants

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

1. I am an admitting officer of the Massachusetts General Hospital.

2. In the evening of September 20, 1970, one Patrick M. Kivlin was brought to the hospital in the care and custody of officers of the City of Revere Police Department for emergency treatment resulting from gunshot wounds in the abdomen. I admitted him at that time, was informed by the police of the City of Revere that he was under arrest, and notified the Massachusetts General Hospital Security Department of this fact.

3. After emergency treatment, Patrick M. Kivlin remained as an in-patient at the Massachusetts General Hospital.

This affidavit, made in support of the plaintiff's motion for summary judgment, is made under the pains and penalties of perjury this 1st day of February, 1980.

Massachusetts General Hospital
By

Harold J. Randolph
Admitting Officer